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February 1, 1999

EX PARTE OR LATE FILED

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**By Messenger**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: **EX PARTE**  
File No. 188-SAT-LOI-97;  
ET Docket No. 95-18;  
RM-9328 ✓

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FEB - 1 1999

Dear Ms. Salas:

Representatives of ICO Global Communications, an affiliate of ICO Services Limited, which is one of several applicants seeking authorization to offer mobile satellite service ("MSS") in the United States at 2 GHz (collectively, "ICO"), and its potential service partners met on January 8, 1999 with Commission staff members concerning the various licensing and service rule options under consideration by the International Bureau ("Bureau") in the 2 GHz MSS processing round.<sup>1</sup>

Subsequent to that January 8 meeting, ICO has continued to contemplate the various potential service rule options discussed at the meeting. In that regard, ICO has developed a set of principles, which is set forth in Part I below, that ICO believes should comprise the framework within which any service rule options proposed by the Commission should be assessed. ICO urges the Commission to incorporate this set of principles, most of which have been adopted in earlier satellite licensing proceedings, into its notice of proposed rulemaking concerning 2 GHz MSS service rules.

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<sup>1</sup> See Letter from Cheryl A. Tritt, counsel for ICO Global Communications, to Magalie Roman Salas, Federal Communications Commission (Jan. 14, 1999).

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In Part II below, ICO sets forth a licensing scheme that is consistent with the set of principles described below. ICO urges the Commission to propose such a licensing scheme in its 2 GHz notice of proposed rulemaking.

## I. The Principles

- A. *Any licensing scheme adopted by the Commission must permit expeditious entry into the MSS marketplace by new entrant 2 GHz MSS operators.*

The 2 GHz MSS processing round is characterized by applicants whose systems are at widely disparate stages of development. The Commission's 2 GHz MSS licensing scheme should ensure that those applicants, such as ICO, that are prepared to offer service near term, are authorized to do so. The Commission's 2 GHz MSS licensing scheme should not delay the entry of new competition to the MSS marketplace simply because the systems of some applicants are not as well developed as the systems of other applicants. ICO has proposed previously that the Commission conditionally license new 2 GHz MSS entrants as an initial matter in order to ensure timely entry for new entrant systems that will be commercially operational near term. The Commission previously has recognized that the presence of additional competitors serves the public interest by increasing competition.

- B. *Any licensing scheme adopted by the Commission must promote efficient use of the spectrum by authorizing only those applicants that demonstrate that they are commercially and technically viable.*

The Commission should ensure that only those applicants that likely will utilize the spectrum are authorized. In this regard, the Commission should adopt legal, technical and financial eligibility requirements for 2 GHz MSS applicants. Such eligibility requirements would be consistent with similar requirements that the Commission has long applied in the satellite licensing context.

In addition, the Commission should require 2 GHz MSS operators to make significant progress towards commercial operation by conditioning their licenses on the operators' satisfying certain developmental milestones. As with eligibility requirements, such developmental milestones would be consistent with similar milestones the Commission previously has applied in the satellite licensing context.

MSS applicants that cannot satisfy the eligibility requirements should not be conditionally licensed. MSS licensees that cannot satisfy the milestones should not receive permanent licenses. In this manner, the Commission properly would ensure that 2 GHz MSS spectrum is efficiently utilized and not simply "warehoused."

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**C. *Any licensing scheme adopted by the Commission should ensure access to later entering MSS operators.***

The Commission should ensure that later entering operators also are given an opportunity to serve the U.S. market. In order to avoid delays inherent in premature frequency coordination negotiations and to facilitate consideration of later qualified entrants, the Commission should condition the initiation of frequency coordination on the satisfaction of specific developmental milestones before permitting such systems to enter into frequency coordination with other systems that have met these milestones. Moreover, the avoidance of premature frequency coordination would avoid the premature and/or unnecessary relocation of 2 GHz terrestrial incumbents.

**D. *Any licensing scheme adopted by the Commission should allow for maximum flexibility in spectrum assignment.***

The Commission's licensing scheme should acknowledge that satellite technology, market conditions and capital markets are always subject to fluctuations and change, making it impossible for the FCC to predict with certainty which MSS operators will commercially succeed. Accordingly, the Commission should adopt a licensing scheme that allows for maximum flexibility in terms of the amount of spectrum awarded to any individual MSS operator. The Commission will best further competition in the MSS marketplace by allowing that marketplace to decide the number and nature of MSS systems operating at 2 GHz.

## **II. The Licensing Scheme**

**A. *Only those 2 GHz MSS applicants that satisfy legal, technical and financial eligibility requirements should be conditionally licensed.***

**B. *2 GHz global MSS systems should be conditionally licensed across the band (with subsequent intersystem coordination to determine authorized segments for each system).***

- 2 GHz non-geostationary MSS systems should be conditionally licensed across the band.

- 2 GHz geostationary MSS systems should be conditionally licensed within appropriate portions of the Region 2 spectrum band.

- 2 GHz MSS systems should be required to have sufficient frequency agility to allow band plan changes as practicable over time -- *i.e.*, as usage increases and spectrum is cleared.

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**C. *Eligibility for subsequent domestic intersystem coordination should be limited to avoid spectrum warehousing and unnecessary relocation of incumbent operators.***

- Domestic intersystem coordination should be used to determine authorized operational frequency segments for each system.
- Eligibility to participate in domestic intersystem coordination should be determined by measurable developmental milestones that are far enough into the process to assure that they are meaningful, but early enough in the process to allow adequate time for negotiations, system implementation and relocation, if necessary. ICO suggests that 2 GHz MSS operators must demonstrate, in addition to the filing of a request for ITU frequency coordination and other FCC developmental milestones, the following in order to become eligible to participate in intersystem coordination:
  - proof of an unconditional contract to launch; and
  - proof that the operator is within a year of the launch of its first satellite.
- 2 GHz MSS conditional licensees that satisfy these initial milestones should be assured of receiving a minimum amount of spectrum.

**D. *2 GHz MSS operators should be required to satisfy measurable developmental milestones in order to receive a permanent license.***

- In order to prevent warehousing of spectrum, 2 GHz MSS operators that are conditionally licensed should be required to demonstrate progress towards commercial operation by satisfying measurable developmental milestones similar to those utilized in the Big LEO service. An operator that fails to satisfy a milestone should not be eligible to receive a permanent license.
- The time periods associated with these measurable developmental milestones should begin to run upon an operator's receipt of a conditional license to operate its user links; the milestones should *not* be tied to an operator's receipt of a license to operate its feeder/cross links.

\* \* \*

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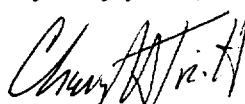
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ICO fully supports the Bureau's efforts to solicit the views of satellite industry members prior to initiating a rulemaking proceeding to adopt service rules for 2 GHz MSS and welcomes the opportunity to discuss further the 2 GHz MSS service rule proceeding. An original and one copy of this letter have been submitted to the Secretary of the Commission for inclusion in the public record, as required by Section 1.1206(b)(2) of the Commission's rules.

Very truly yours,



Cheryl A. Tritt

Counsel for ICO Global Communications

cc: Regina Keeney  
Linda Haller  
Thomas Tycz  
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Karl Kensinger  
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